

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Arbitration Between:

VULCAN ENERGY SOLUTIONS, LLC,

Petitioner,

- and -

MINISTRY OF ELECTRICITY OF THE
REPUBLIC OF IRAQ,

Respondent.

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No. 08 Civ. 3668 (AKH)

~~PROPOSED~~ **CONSENT
ORDER GRANTING PETITION
TO CONFIRM ARBITRAL
AWARD AND DIRECTING
ENTRY OF JUDGMENT**

WHEREAS, on October 28, 2005, Vulcan Energy Solutions, LLC ("Vulcan") initiated an arbitration proceeding against the Ministry of Electricity of the Republic of Iraq (the "Ministry"), Case No. 50 198 T 00441 05 (the "Arbitration"), before and pursuant to the Rules of the International Centre for Dispute Resolution of the American Arbitration Association; and

WHEREAS, in the Arbitration, Vulcan asserted claims for breach of contract and alleged that the Ministry had breached a contract entered into between the Ministry and Vulcan on February 22, 2005 for the rehabilitation of certain power plant generators in Iraq (the "Contract"); and

WHEREAS, in the Arbitration, Vulcan further alleged that as a result of the foregoing breach, Vulcan suffered over \$22,000,000 in damages consisting of, *inter alia*: (i) amounts expended by Vulcan towards mobilization and performance of the Contract; (ii) profits that Vulcan would have realized on the Contract; (iii) costs and expenses; and (iv) interest; and

WHEREAS, over the course of the Arbitration, the parties: (i) exchanged documents; (ii) submitted witness statements, pre-trial briefs and post-trial briefs; and (iii) participated in a four-day hearing on the merits at which witnesses testified and were cross-examined; and

WHEREAS, on March 28, 2007, after consideration of all of the evidence presented, Hon. Stephen M. Schwebel (the “Arbitrator”) issued a Final Award of the Sole Arbitrator (the “Final Award”) (attached hereto as Exhibit A) in which he held *inter alia* that: (i) “the contract cannot be set aside on the ground that it was procured by bribery”; (ii) “the Ministry cannot ... avoid the contract on the ground of the lack of authority of Minister [of Electricity Dr. Aiham] Alsammarae to conclude it”; and (iii) “Vulcan ha[d] not established that the Ministry was in breach of the contract by its treatment of payment of the mobilization fee,” and accordingly denied Vulcan’s claims “for an award of damages, attorney’s fees and interest;” and

WHEREAS, on April 23, 2007, Vulcan submitted a Request for Completion and Clarification of Award (the “Clarification Request”) in which it contended that: (i) the Final Award did not contain the Arbitrator’s ruling on several of Vulcan’s claims; and (ii) the meaning of the rulings that were contained in the Final Award were unclear; and

WHEREAS, on May 10, 2007, the Arbitrator issued the Disposition of Application for Completion and Clarification of the Final Award (the “Clarification Decision”) (attached hereto as Exhibit B) in which he denied the Clarification Request and concluded that: (i) the meaning of the Final Award was unambiguous and did not require interpretation; and (ii) the alleged “breaches” of the Contract which Vulcan claimed the Arbitrator had not ruled upon were “not independent breaches of contract that required separate consideration and disposition in the [Final] Award,” but rather were “incidental to and subsumed by the treatment by counsel of the issue of the mobilization fee and equally [were] incidental to and subsumed by the [Final] Award’s analysis and holding on this dispositive issue;” and

WHEREAS, on March 26, 2008, Vulcan filed a Petition to Confirm Arbitration Award (the “Petition”) in the Supreme Court of the State of New York, County of New York, requesting

confirmation of the Final Award and Clarification Decision (together, the "Arbitration Award");
and

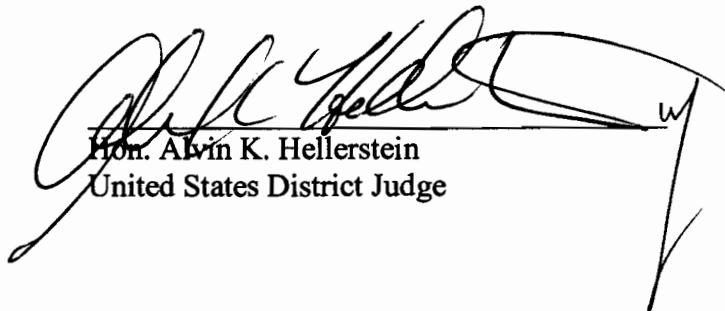
WHEREAS, the Ministry removed the proceeding to this Court and filed a response to the Petition on April 16, 2008; and

WHEREAS, the Ministry does not oppose the confirmation of the Arbitration Award and entry of judgment as set forth herein.

Upon due deliberation and consideration of Vulcan's Petition to Confirm Arbitration Award, the Ministry's Response to the Petition to Confirm Arbitration Award, the parties' stipulation to this consent Order, and for good cause shown, it is hereby:

ORDERED, ADJUDGED AND DECREED, that the Arbitration Award denying all claims for damages by Vulcan Energy Solutions, LLC against the Ministry of Electricity of the Republic of Iraq for breach of the Contract, is hereby confirmed. No other issues remaining for judicial resolution, this case is hereby dismissed. The clerk of the court shall mark the case as closed.

Dated: New York, New York
4/30, 2008



Hon. Alvin K. Hellerstein
United States District Judge